

Umesh Borgohain Vs Indian Drugs and Pharmaceuticals Ltd.

Court: Gauhati High Court

Date of Decision: July 18, 1991

Acts Referred: Constitution of India, 1950 " Article 226, 226

Citation: (1991) 2 GLJ 164

Hon'ble Judges: R.K.Manisana Singh, J and M.Sharma, J

Bench: Division Bench

Advocate: A.K.Thakur, A.R.Barthakur, A.B.Choudhary, K.Basar, Advocates appearing for Parties

Judgement

R. K. Manisana, J.

In this application under Article 226 of the Constitution of India, the petitioner has prayed for directing the respondents to fix the headquarters of the petitioner at Gauhati and to make the payment of his subsistence allowance.

2. Facts, At the relevant time, the petitioner was an employee officer under the respondent1, Indian Drugs & Pharmaceuticals Limited, a

Government of India undertaking, and was posted at Ahmedabad. While he was working at Ahmedabad the respondent 3, Senior SubDivisional

Manager (W), issued suspension order dated 9.12.86 placing the petitioner under suspension. Under that order the headquarters of the petitioner

was fixed at the Regional Office at Ahmedabad, and the petitioner was directed not to leave the headquarters (Admedabad) without obtaining the

previous permission from the respondent 3. In the suspension order, it was also indicated that subsistence allowance admissible to the petitioner

during the period of suspension would be issued separately In the counter of the respondents, there are allegations against the petitioner about his

misconduct for leaving the headquarters without permission, etc.

3. In the course of the hearing of the petition, Shri A B. Choudhury, learned counsel for the respondents, has contended that this Court has no

territorial jurisdiction as the cause of action wholly arose in Ahmedabad. Mr. A.R. Barthakur, learned counsel for the petitioner, has submitted that

the cause of action, in part if not wholly, arose within Assam and, therefore, this Court has jurisdiction to entertain the petition, or in any event the

question of territorial jurisdiction cannot be raised at this stage for the respondents have waived to raise the question.

4. The writ petition was filed on 8.1.90. On 11.1.90, this Court passed an interim order directing the respondents to make the payments of

subsistence allowance as due to the petitioner within a period of two weeks from the date of receipt of that order. The order was subsequently

modified on 26.2.90 directing the respondents to pay the petitioner a sum of Rs. 7000/ out of his subsistence allowance at Gauhati within a period

of 15 days to meet his expenses to go and report to the headquarters at Ahmedabad and also to pay the entire subsistence allowance to the

petitioner less Rs. 7000/, if paid at Gauhati, at Ahmedabad within 10 days. On 16.3.90, the learned counsel for the respondents prayed for

extension of time for payment of the amount of Rs.7000/. Subsequent orders indicate that Rs. 7000/ had been paid to the petitioner in pursuance

of the order dated 26.2.90. In other words, the interim orders were given effect to and the respondents from time and again filed applications for

modification of the interim order or otherwise submitting to the jurisdiction of this Court without raising the question of jurisdiction.

5. The objection as to territorial jurisdiction should be taken at the earliest opportunity. In this case, the objection to jurisdiction was taken for the

first time in the course of the hearing of the main petition. The respondents could have raised the point of territorial jurisdiction at the time of passing

the interim orders. Instead, they were filing applications time and again for modification of the interim order or otherwise as already stated. The

respondents had implemented all the directions issued from time to time by this Court. On the ground of lack of territorial jurisdiction, if the writ

petition is to be returned for presentation to the proper Court, there will be complications as the interim orders have been given effect to. The

affidavit in opposition was filed on 29.5.90, after the passing of the interim order, stating that this Court has no jurisdiction to entertain the writ

petition as the suspension order was issued at Ahmedabad. After the filing of the affidavit in opposition also, the respondents did not take objection

to jurisdiction. For instance, the respondents did not raise any objection while application of the petitioner for directing the respondents to pay

subsistence allowance at Gauhati was heard and disposed of on 18.6.90. If the question was raised earlier, this Court would have considered the

same, and no occasion would have arisen to pass the interim orders or any order affecting the respondents, if it was found that this Court has no

local jurisdiction.

6. In Hira Lal vs. Kali Nath, AIR 1962 SC 199, the Supreme Court has held:

It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a

court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack

of jurisdiction. On the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory

recognition by enactments like S. 21 of the Code of Civil Procedure.

In *Bahrein Petroleum Co vs. P.J. Pappu*, AIR 1966 SC 634, it has been held that independently of section 21, CPC, the defendant may waive

objection and may be subsequently precluded from taking it. In the facts and circumstances of the case discussed above, we are of the view that

objection as to the local jurisdiction has been waived by the respondents, and that there would not be failure of justice if the petition is heard and

disposed of by this Court. Therefore, we are not dealing with the question as to whether this Court has the jurisdiction.

7. As regards the change of headquarters, the petitioner has submitted a fresh representation to the respondents for change of his headquarters as

directed by this Court, but it was rejected on 1. 11. 90. In the Government of India's instruction dated 8.9.56. it is stated :

An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave

the station without prior permission. As such the headquarters of a Government servant should normally be assumed to be his last place of duty.

However, where an individual under suspension requests for a change of headquarters there is no objection to a competent authority changing the

headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of TA. etc or other complications." (see

Chaudhuri's compilation of the Fundamental Rules and the Supplementary Rules, Volume 1, 9th Edition).

We are of the opinion that the principle underlying the instruction quoted above can be considered in, or should be extended to, such a case in the

interest of administration of justice.

8. In the order of rejection by the management, it is stated thus :

...when an employee is suspended, it is entirely the prerogative of the management to determine his headquarter during the suspended period.

Since at the time of your suspension, you were posted in Ahmedabad Region, accordingly your headquarter during the suspended period has been

kept Ahmedabad accordingly, no injustice has been done in this regard.

The order does not indicate that the change of headquarters will put the respondents to any inconvenience or complication. The petitioner

submitted representation for the change of headquarters on the compassionate ground of his ill health. The order does not also show that the

management considered the petitioner's ill health and, therefore, the management did not apply its mind, and as such, mere stating that no injustice

has been done would not be sufficient. Fair play in action must be the basis of the policy whether in administrative function, judicial function or

quasijudicial function. The respondent is a Government of India undertaking, viz, an organ of the State or an instrumentality of the State. Therefore,

the action of State organ can be checked under Article 14 of the Constitution. Every action of the authority of State organ must be subject to rule

of law and must be informed by reasons. The Courts in this country are primarily the Courts of equity, justice and good conscience [see Indira Bai

vs. Nand Kishore, (1990) 4 SCC 688], and judicial review is not against the decision, but, against the ""decision making process"". Therefore, in the

facts and circumstances of the case, if we direct to change the headquarters of the petitioner from Ahmedabad to Gauhati it will be fair and just and

in consonance with equity. We do so accordingly.

9. In the result, it is ordered and directed that the respondents shall issue order for changing the headquarters of the petitioner to Gauhati and make

the payments of subsistence allowances as admissible to him under the rules at Gauhati. The petition is allowed. No costs.